

Christopher Ho, State Bar No. 129845  
Christina N. Chung, State Bar No. 194630  
Carole Vigne, State Bar No. 251829  
The Legal Aid Society – Employment Law Center  
600 Harrison Street, Suite 120  
San Francisco, CA 94107  
Telephone (415) 864-8848  
Facsimile (415) 864-8199

Hillary Ronen, State Bar No. 228606  
Rocío Alejandra Avila, State Bar No. 252719  
LA RAZA CENTRO LEGAL, INC.  
474 Valencia Street, Suite 295  
San Francisco, CA 94103  
Telephone: (415) 575-3500  
Facsimile: (415) 255-7593

Attorneys for Plaintiff  
VILMA SERRALTA

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

VILMA SERRALTA,	)	No. C 08-01427 CW
	)	
Plaintiff,	)	<b>PLAINTIFF’S MOTION FOR AN ORDER</b>
v.	)	<b>TO EXTEND THE EXPERT</b>
	)	<b>DISCLOSURE AND EXPERT</b>
SAKHAWAT KHAN; ROOMY KHAN; and	)	<b>DISCOVERY CUT-OFF DATES</b>
DOES ONE through TEN, inclusive,	)	
	)	<b>[Civ. L. R. 6-3]</b>
Defendants.	)	
	)	
	)	Date & Time: [To be set]
	)	Courtroom: 2 (4th Floor)
	)	Judge: Honorable Claudia Wilken
	)	
	)	

PLAINTIFF’S MOTION TO EXTEND EXPERT DISCLOSURE AND  
EXPERT DISCOVERY CUT-OFF DATES  
No. C 08-01427 CW

Pursuant to Civil Local Rule 6-3, Plaintiff respectfully moves for an Order to Extend the Expert Disclosure and Expert Discovery Cut-off Dates.<sup>1</sup> Plaintiff's Motion is necessitated by the highly questionable tactics of Defendants and their counsel that have denied Plaintiff a full and fair opportunity to examine original documents responsive to Plaintiff's written discovery requests prior to the expiration of the current expert disclosure cut-off of April 20, 2009. Plaintiff has concurrently filed a Motion to Compel Production of Original Documents and accompanying Motion for an Order Shortening Time on Plaintiff's Motion to Compel, which are interrelated with the instant motion.

At sole issue underlying Plaintiff's request for an extension of the expert discovery deadlines are two discrete categories of documents – namely, **(1) the clearest, best available copy of a one-page document of suspect origin, Bates-stamped "Khan 308,"<sup>2</sup>** and **(2) the originals of canceled checks paid to Plaintiff** – that Plaintiff's expert consultant, David S. Moore, a forensic document examiner, believes may reveal evidence important to his analysis and that, in turn, Plaintiff believes will help demonstrate Defendants may have engaged in document fraud. *See* Declaration of Christina Chung in Support of Plaintiff's Motion to Compel Production of Original Documents, Motion for an Order Shortening Time, and Motion to Extend the Expert Disclosure and Expert Discovery Cut-off Dates ("Chung Decl.") ¶ 14; Declaration of David S. Moore in Support of Plaintiff's Motion to Compel Production of Original Documents, Motion for an Order Shortening Time, and Motion to Extend the Expert Disclosure and Expert Discovery Cut-off Dates ("Moore Decl.") ¶¶ 2,10.

On June 18, 2008, Plaintiff issued Requests for Production Nos. 4, 5, and 6 to Defendants that demanded and reserved Plaintiff's right to inspect the documents at issue. Chung Decl. ¶¶ 2, 4, 7. Indeed, Defendants have not disputed that, pursuant to Plaintiff's discovery requests from *last year*, they are required to produce the originals of Plaintiff's canceled checks and the copy of "Khan 308" that, by Defendants' own account, is the clearest copy of the putative original – nor do they have a

<sup>1</sup> Due to Defendants' history of dilatory conduct in this case, earlier this year, Plaintiff previously filed a Motion to Modify the Case Management Schedule ("Motion to Modify") in order to extend the case deadlines. This Court granted Plaintiff's Motion to Modify on January 30, 2009. The expert deadlines at issue in the instant Motion are therefore pursuant to this Court's Case Management Order of January 30.

<sup>2</sup> Putatively setting forth Plaintiff's job responsibilities and work schedule for Defendants, "Khan 308" is a document that was allegedly signed in 2002 by Plaintiff and Defendants' third party witness, Harleen Chopra. Chung Decl. ¶ 7.

1 valid legal basis for so disputing. Chung Decl. ¶ 29. At issue here is *when* Defendants must produce  
2 these documents – either immediately and prior to examination by Defendants’ expert, as Plaintiff  
3 requests, or sometime “on or after April 27” as Defendants have proposed, when the current expert  
4 disclosure deadline has conveniently elapsed.

5 Tellingly, Defendants very delinquent produced copies of the documents at issue – *seven to*  
6 *eight months after* Plaintiff had asked for them in June 2008. Defendants did not provide Plaintiff  
7 with copies of her canceled checks until **February 18, 2009** – on the morning of Defendant Roomy  
8 Khan’s deposition, and only after Defendants’ third party witness, Harleen Chopra, testified the day  
9 before that she had access to the canceled checks as of **September 2007**. Meanwhile, “Khan 308,”  
10 which Plaintiff contends does not bear her genuine signature, was in fact not produced until **March**  
11 **13, 2009** – the very morning of Plaintiff’s deposition, and only after Plaintiff’s counsel had already  
12 deposed Defendants. Chung Decl. ¶¶ 4, 7-9. Indeed, its very existence had apparently been  
13 concealed by Roomy Khan. During her February 18 deposition, Roomy Khan testified that, other  
14 than two previously-produced documents that allegedly related to Plaintiff, she was not aware of any  
15 other documents setting forth Plaintiff’s job duties. Deposition of Roomy Khan, Vol. 1, 70:17 –  
16 71:10; Chung Decl. ¶ 10, Exh. E. However, after Plaintiff’s counsel demanded to reopen Defendants’  
17 depositions due to the delinquent production of “Khan 308,” Roomy Khan admitted during her  
18 subsequent testimony on April 7, 2009, that she had actually “known... all along” of the existence of  
19 “Khan 308” – which was a type of employment document describing job duties that she regularly  
20 drafted and asked her assistant, Ms. Chopra, to type up for “practically everybody” Roomy Khan  
21 hired – and that she had in fact been asking Ms. Chopra *since last year* to locate the document on her  
22 behalf. Deposition of Roomy Khan, Vol. 2, 235:14-22; 236:5 – 237:13; 238:11-14; 240:25 – 241:14.  
23 Chung Decl. ¶ 11, Exh. F.

24 Immediately after Defendants produced a copy of “Khan 308” at Plaintiff’s deposition on  
25 March 13, Plaintiff’s counsel worked assiduously to evaluate the document, including an analysis of  
26 other documents produced by Defendants, since Plaintiff’s counsel did not believe “Khan 308” was  
27 authentic. As part of this document analysis, Plaintiff’s counsel was able to secure the assistance of a  
28

1 forensic document examiner, David S. Moore, by the end of March. Chung Decl. ¶ 13.

2 Subsequently, on April 7, when Roomy Khan and Ms. Chopra revealed during their depositions that

3 Mrs. Khan still retained the very first copy made of “Khan 308” in her guesthouse basement, as well

4 as the location of the original canceled checks in an office in the guesthouse, Plaintiff’s counsel

5 obtained the necessary information justifying prompt production of these documents that Mr. Moore

6 believed may be important to his analysis. Chung Decl. ¶ 15. Consequently, immediately after the

7 depositions concluded and Defendants had been apprised of Plaintiff’s concern that they may have

8 engaged in document forgery, on April 7, Plaintiff’s counsel provided Defendants’ counsel, Jonathan

9 Hicks, with a letter requesting that Defendants produce the originals (or first generation copy) of

10 “Khan 308” and Plaintiff’s canceled checks, by no later than April 10. Chung Decl. ¶¶ 16-17.

11 Once Plaintiff requested these documents and set forth her reasons for doing so, Defendants’

12 counsel made contradictory and misleading statements to Plaintiff’s counsel regarding Defendants’

13 purported efforts to respond to Plaintiff’s requests:

- 14 • Initially, on April 8, Mr. Hicks stated that he wanted to “assure” Plaintiff’s counsel that he and
- 15 his clients were “diligently working to collect these original documents,” raised what now
- 16 appears to be a red herring issue that the documents would not be released to Plaintiff but would
- 17 be available for inspection in his office, and represented that he would “let [Plaintiff’s counsel]
- 18 know tomorrow” when the documents would be available in his office.
- 19 • That same day, on April 8, Mr. Hicks ignored Plaintiff’s request to provide a basis for refusing
- 20 to release the documents to Plaintiff and the reason that Defendants needed more than two days
- 21 to “gather” documents that had already been recently found in their own guesthouse.
- 22 • *The very next day*, on April 9, after Plaintiff’s counsel provided Mr. Hicks with various
- 23 proposals addressing Defendants’ possible concerns behind their refusal to allow Plaintiff
- 24 temporary possession of the documents, Mr. Hicks suddenly asserted that he did not have
- 25 access to the documents, which were “not currently available” because Defendants were now
- 26 conveniently “out of town”—even though he had indicated *the day before* that Defendants had
- 27
- 28

1 been “working diligently to collect” the documents. Mr. Hicks provided no explanation as to  
 2 why this information could not have been communicated to Plaintiff’s counsel the previous day.

- 3 • Moreover, Mr. Hicks proceeded to inform Plaintiff’s counsel that the requested documents  
 4 would not be provided to Plaintiff until *18 days later “at the earliest”* – conveniently for  
 5 Defendants, *after* the expert disclosure deadline of April 20 and after the documents were sent  
 6 to an expert Defendants hastily retained after the fact. Mr. Hicks’ only excuse was that his  
 7 clients were “out of town”– which still begged the question of why they could not produce the  
 8 documents to Plaintiff upon their return, prior to sending the documents to their expert.
- 9 • Finally, Mr. Hicks refused to inform Plaintiff when his clients would return to town and when  
 10 he would therefore again have access to the documents, and refused to allow Plaintiff even an  
 11 on-site inspection of the documents at his offices prior to sending them to Defendants’ expert.

12 Chung Decl. ¶¶ 18-24.

13 On April 7-10 and 13, Plaintiff’s counsel met and conferred with Mr. Hicks. Chung Decl. ¶  
 14 17-29. The parties discussed but could not agree upon a stipulation to extend the expert disclosure  
 15 and expert discovery completion dates. Chung Decl. ¶ 26. Plaintiff requested a stipulation that the  
 16 expert disclosure cut-off would occur 10 court days after April 27 or the date Defendants are ordered  
 17 to produce the documents requested, whichever date is earlier. Accordingly, Plaintiff further  
 18 requested that Defendants stipulate to a modification of the expert discovery cut-off date, to occur 45  
 19 days<sup>3</sup> after the expert disclosure deadline. Plaintiff did not believe any other modification to the case  
 20 timeline was necessary, given the delays already caused by Defendants in this case. However,  
 21 Defendants countered with an expert disclosure deadline of May 11, 2009, regardless of whether  
 22 Defendants are ordered to produce the documents at issue earlier than April 27, *and without*  
 23 *acknowledging that Defendants would actually produce the documents on April 27*. Mr. Hicks also  
 24 insisted on extending the fact discovery cut-off. Plaintiff did not agree. Chung Decl. ¶ 27.

25 Substantial harm to Plaintiff will occur if the current expert deadlines are not extended. The  
 26 expert disclosure deadline is due to lapse on April 20, but Defendants have repeatedly refused to

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27 <sup>3</sup> This is equal to the same number of days in the January 30 Case Management Order between the expert  
 28 disclosure date and completion of expert discovery.

1 provide Plaintiff's expert with documents that may provide the best available evidence for  
 2 examination prior to the expiration of the deadline. Defendants would not stipulate to Plaintiff's  
 3 reasonable request that an extension of the expert deadlines should flow from the *actual date of*  
 4 *document production* by Defendants, and that no other dates need be altered that would only protract  
 5 the timeline in this case. Chung Decl. ¶ 27. The sole reason Plaintiff is seeking an extension of the  
 6 current expert deadlines, to which Plaintiff would otherwise like to adhere, is Defendants'  
 7 unreasonable refusal to provide timely access to the documents responsive to Plaintiff's RFPs issued  
 8 in June 2008. Indeed, were it not for Defendants' obstructionist tactics, there would have been no  
 9 need for Plaintiff to file the instant motion; the case timeline could have proceeded accordingly, as  
 10 Plaintiff's expert was prepared to examine the documents requested once he was provided timely  
 11 access to them and, accordingly, to issue a report by the current deadline of April 20. Chung Decl. ¶  
 12 30. In any event, Defendants would have had and still have their opportunity to inspect the  
 13 documents during the 30-day period for designation of a rebuttal expert.

14 For the reasons set forth herein, Plaintiff respectfully seeks an Order: (1) extending the expert  
 15 disclosure deadline by 10 court days after April 27 or the date Defendants are ordered to produce the  
 16 documents requested by Plaintiff, whichever date is earlier; and (2) extending the expert discovery  
 17 completion date, to occur 45 days after the expert disclosure deadline.

18 DATED: April 13, 2009

Respectfully submitted,  
 Christopher Ho  
 Christina Chung  
 Carole Vigne  
 The LEGAL AID SOCIETY  
 --EMPLOYMENT LAW CENTER

Hillary Ronen  
 Rocio Avila  
 LA RAZA CENTRO LEGAL, INC.

By: /S/ CHRISTINA CHUNG  
 CHRISTINA CHUNG  
 Attorneys for Plaintiff